

*** IN THE HIGH COURT OF DELHI AT NEW
DELHI**

Judgment Reserved on: 5th July, 2011

% Judgment Pronounced on: 1st August, 2011 +
LPA No. 145/2011

DELHI METRO RAIL CORPORATION LTD.
Appellant Through: Mr. Goolam E. Vahanvati, AG
with Mr. Tarun Johri, Adv.

Versus

SH. SUDHIR VOHRA Respondent Through:
Respondent in person

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

1 Whether reporters of the local papers be allowed to see the judgment? Yes
2 To be referred to the Reporter or not? Yes 3 Whether the judgment should be reported in the Digest? Yes DIPAK MISRA, CJ Calling in question the legal pregnability of the order dated 24th December, 2010 passed by the learned Single Judge in WP (C) No. 3036/2010, the present intra-Court appeal has been preferred under Clause X of the Letters Patent.

2. Filtering the unnecessary details, the facts which are requisite to be expositied are that the respondent, an architect, filed an application under the Right to Information Act, 2005 (for brevity „the RTI Act“) requiring the Delhi Metro Rail Corporation Ltd. (DMRC) to give him "all structural drawings of both the pile foundation and the superstructure, including all steel reinforcement details, foundation details, engineering calculations and soil tests" pertaining to the cantilevered bracket of Metro Pillar No.67 which had collapsed on 12th July, 2009 resulting in the death of six persons and injury to many others. The Central Public Information Officer of the DMRC, by communication dated 7th/10th July, 2009, declined the information sought on the ground that it was intellectual property of the DMRC and considerable cost and time had been spent in preparing the design. The DMRC also claimed exemption from disclosure under Section 8(1)(d) of the RTI Act.

3. Being dissatisfied with the order passed by the Central Public Information Officer and the first appellate authority, the respondent preferred an appeal before the Central Information Commission (CIC). Before the Commission, a further ground was urged by the appellant that if the details of the designs / drawings are disclosed to the applicant for the public at large, there is a possibility of anti-national elements causing sabotage to the structures at the vulnerable points and that is why photography of certain sensitive structures such as bridges, etc. is prohibited. In essence, it was urged that the disclosure of the designs / drawings in question would be prejudicial to

the safety and security of the travelling public and would impede the sovereignty and integrity of India as also the security and strategic interests of the State. Thus, the DMRC contended that it was exempted under Section 8(1)(a), (d) and (h) of the RTI Act. A further stand was also set forth that in relation to the accident that had taken place, a criminal investigation was pending and the disclosure of the requisite information may hamper the investigation and, hence, the information was withheld under Section 8(1)(h) of the RTI Act.

4. The CIC, by order dated 18th March, 2010, repelled the submissions of the DMRC and expressed the view that the DMRC is „State“ and, therefore, it cannot decline to supply the information under Section 8(1)(d) of the RTI Act; that the exemption claimed under Section 8(1)(a) of the RTI Act could not be held to prejudicially affect the sovereignty and integrity of India or its security and strategic interests; that the disclosure of the information sought is in the larger public interest inasmuch as placing the of the failed structure in the public domain may spur all the authorities to develop safer design in providing optimal security to the travelling public; that the plea pertaining to investigation by the Crime Branch of Delhi Police was not likely to be adversely affected by the disclosure of the information sought and, therefore, Section 8(1)(h) was not attracted. Being of this view, the Commission directed the DMRC to supply the information as sought for by the respondent.

5. Being grieved by the aforesaid order, the DMRC invoked the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India and contended before the learned Single Judge that the Commission has failed to appreciate the stand and stance of the DMRC especially pertaining to the security interest and the jeopardy that is likely to be caused by such supply of information. It was also urged that the design of the Pillar No. 67 is the intellectual property of the DMRC and, therefore, the CIC could not compel the DMRC to disclose such design unless the larger public so warranted. It was argued before the learned Single Judge that the design was a faulty one and the DMRC does not intend to use it in future in any construction project and further furnishing / disclosure of such information would adversely affect the economic interest of the DMRC. The respondent who appeared in person

combated the said submissions and also contended that the design is already on the public domain, the same being available on the internet.

6. The learned Single Judge referred to Sections 8(1)(d) and 9 of the RTI Act and opined that there is no discretion to refuse when it comes to disclosure of information pertaining to a copyright vesting in the State and, therefore, the DMRC cannot refuse the information sought even if it might involve infringement of its copyright in the design pertaining to the cantilevered bracket of Metro Pillar No.67. The learned Single Judge further opined that whatever copyright the DMRC has in the design in question, the DMRC can, in terms of the law governing the copyright in the country, seek to protect such right in the manner known to law. The writ court, referring to Section 8(1)(a) of the RTI Act, has expressed the view that when DMRC has already taken a stand that the design was faulty and it is not going to be used in future and further the same is available to the public on the internet, the disclosure of such design can hardly be said to prejudicially affect the security, strategic, scientific and economic interests of the DMRC.

7. We have heard Mr.Goolam E. Vahanvati, the learned Attorney General along with Mr.Tarun Johri, the learned counsel for the appellant and Mr.Sudhir Vohra, the respondent in person.

8. Assailing the impugned order, it is submitted by Mr.Goolam E. Vahanvati, the learned Attorney General for India, that the Commission as well as the learned Single Judge has fallen into grave error in their appreciation of the analysis of Section 8(1)(a), (d) and (h) of the RTI Act inasmuch as these provisions have to be read in conjunction with Section 9 of the RTI Act. It is proposed by him that a manifest error has crept in the process of judicial review by the learned Single Judge inasmuch as he has observed that as the information is already in the public domain, the plea of the DMRC, the present appellant, that such disclosure could prejudicially affect the security, strategic, scientific or economic interest is unsustainable. It is his further submission that Section 8(1)(a) has to be interpreted in a restricted manner for a broader interpretation is likely to put the State security and other ancillary facets into jeopardy as there can be applications seeking

information with regard to airports, strategic complexes and such other public buildings. It is further propounded by Mr. Goolam E. Vahanvati, the learned Attorney General, that the respondent has already received the information through internet and the same is undisputed and under these circumstances, there is no necessity to supply the said information to the appellant.

9. Mr. Sudhir Vohra, the respondent appearing in person, in opposition of the aforesaid submissions, would contend that the interpretation placed by the Commission which has been concurred with by the learned Single Judge is absolutely flawless as the object and purpose of the RTI Act is to bring transparency in the democratic set up and, therefore, the orders are absolutely impeccable. He has also submitted that the information may be available on the internet but as he has a right to get the information from the DMRC under the RTI Act and his right being a statutory right, the same cannot be denied on the plea that it is already in the public domain and he can collect the information therefrom.

10. To appreciate the rivalled submissions raised at the Bar, it is profitable to refer to Sections 8 and 9 of the RTI Act. Section 8 stipulates the exemption from disclosure of information. Section 9 provides the grounds for rejection to access in certain cases. The learned Attorney General has not disputed the fact. It is not disputed before us that the appellant Corporation would come within the concept of State. The submission of Mr. Vahanvati, learned Attorney General, is that Sections 8 and 9 are to be read in a conjoint manner for the purpose that while Section 9 lays down that a request for information involving an infringement of copyright subsisting in a person other than in a State may be rejected but a State in cases that come under any of the clauses of Section 8 can refuse to provide such information relating to copyright. He has laid immense emphasis on clauses (a), (d), (g) and (h) of the said provision. The said provisions are reproduced below: "8. Exemption from disclosure of information - (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, -

(a) information, disclosure of which would

prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) X X X

(c) X X X

(d) information including commercial confidence,

trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) X X X

(f) X X X

(g) information, the disclosure of which would

endanger the life or physical safety to any person or identify the source of information or assistance given in confidence for law enforcement or security purposes; (h) information which would impede the process of

investigation or apprehension or prosecution of

offenders;"

Relying on the said provisions, it is canvassed that the disclosure would affect the security, strategic, scientific and economic interests of the Corporation. It is also put forth that the supply of information would tantamount to disclosure of trade secret and commercial confidence. That apart, emphasis has been laid on the issue that as an investigation is in progress, a disclosure of such nature would impair the process of investigation.

11. As we perceive, in the case at hand, we are not required to enter into the arena of security, strategic, scientific and economic interests of the State and there is no need to place any interpretation of the said terms in the context in which they have been used under Section 8(1)(a). We are disposed to think so as the information sought by the respondent is already within the public domain. There is no dispute over the facts that it is available on the internet. It was admitted before us that the drawing / details were available with the contractors, engineers, etc. They were not classified as secret or restricted documents. There may be facts / situations where a disclosure may affect the security, strategic, scientific or economic interests of the State but when there is no need to enter into the arena for the purpose of interpreting the said situation in the obtaining factual matrix, we do not intend to dwell upon the said area. It is further urged that the disclosure would reveal the trade secret. The plea relating to commercial confidence, trade secret or intellectual property does not arise if the document / information is in the public domain and has been freely circulated and communicated to various parties involved in the execution of the work. In the case at hand, the said issue also does not arise inasmuch as there is no issue of revelation or disclosure of commercial confidence, trade secret or intellectual property, the disclosure of which would harm the competitive position of a third party. There is no reason relating to public interest on this count. On the contrary, it has already been revealed in a different way. That apart, as we have already stated that the design was given to the engineers, contractors, sub- contractors and other people

working in the field, there has been disclosure earlier. Therefore, clause (a) to Section 8(1) of the Act is not attracted as the disclosure and furnishing of information cannot prejudicially affect the scientific and economic interests of the State.

12. The next limb of submission is that the information would impede the process of investigation and prosecution of offenders. Be it noted, the petitioner wanted to have information of all structures / drawings of Cantilevered bracket of Metro Pillar Number 67 that collapsed on the 12th July, 2009 and all structural drawings of both the pile foundation and the superstructure, including all steel reinforcement details, foundation details, engineering calculations and SOIL Tests.

13. Supplying the aforesaid information, as we perceive, would not impair the process of investigation and prosecution of offenders more so when it is in the public domain. It is not shown how the furnishing of information would impede the investigation or prosecution of offenders.

14. Regard being had to the aforesaid analysis in the backdrop of the factual context, we are unable to accept the submissions canvassed on behalf of the appellant. However, we may state that there may be a situation where disclosure may affect the security, strategic, scientific and economic interests of the State but the present case is not such a one. Therefore, we are of the considered opinion that the view expressed by the learned Single Judge is absolutely defensible.

15. Resultantly, the appeal, being sans substratum, stands dismissed without any order as to costs.

CHIEF JUSTICE

AUGUST 1, 2011 SANJIV KHANNA, J. Kapil/dk

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